

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Roanoke Division**

IN RE:

**ALVIN MAJOR TAWNEY
DOROTHY JANE TAWNEY,**

Case No. 04-04277-7

Debtors

CHARLES R. ALLEN, JR., TRUSTEE,

Plaintiff

v.

**Adversary Proceeding
No. 03-00184**

ASA B. HANCOCK, JR., et als.,

Defendants

DECISION AND ORDER

At Roanoke in said District this 29th day of March, 2005:

The matter before the court for decision is a complaint brought by Charles R. Allen, Jr., Trustee (herein the Trustee) for Alvin Major Tawney and Dorothy Jane Tawney (herein the Debtors) seeking to recover a parcel of real estate conveyed by Mrs. Tawney to Asa B. Hancock, Jr. (herein Hancock) by deed dated August 20, 2002, and recorded September 20, 2002, in the Pulaski County Circuit Court Clerk's Office (herein the Property).¹

The statutory basis under which the Trustee proceeds is 11 U.S.C. §

¹ The property is described by the Trustee as a portion of Lot No. 2, Section III, Town of Pulaski.

Facts

The parties have filed with the court a stipulation of facts upon which they rely for determination of the Trustee's complaint. The stipulation of facts shows that Asa B. Hancock, Jr. gave Dorothy Jane Tawney a written power of attorney dated December 14, 2001, and by deed of gift dated February 26, 2002, and recorded on February 26, 2002, in the Pulaski County Circuit Court, Asa B. Hancock, Jr. conveyed to Mrs. Tawney the Property for the sole purpose of permitting her to use the Property as collateral for a criminal bond for Hancock who was incarcerated and a defendant in a criminal proceeding. Paragraph 3 of the stipulation states that Hancock and Tawney never intended that Mrs. Tawney would retain permanent possession of the Property. The stipulated facts further show that the Property was used as collateral for a bond for Hancock and that the Property was titled in Mrs. Tawney's name for a period of approximately six (6) months during which she did not use the Property for her own financial gain treating it, instead, as being held in trust for another. When there was no need for the Property to remain in the name of Mrs. Tawney for bond purposes, it was reconveyed to Hancock by deed of gift dated August 20, 2002, and recorded September 20, 2002. On October 17, 2002, the Debtors filed their Chapter 7 petition.

Discussion

The Trustee's position is that the facts of this case as stipulated show that Mrs. Tawney made a transfer of the Property within one year before the date of the filing of her

² 11 U.S.C. § 548(a)(1)(B)(i)(ii)(I). Fraudulent transfers and obligations. (a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—(B)(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

petition for less than reasonably equivalent value and that she was insolvent on the date that such transfer was made.³

The defendants who oppose the Trustee's effort to recover the Property for the benefit of creditors of the Debtors' estate argue that Mrs. Tawney merely held the Property conveyed to her by Hancock in trust for the specific purpose of providing collateral for the criminal bail bond which he needed. The stipulated facts support that position. Hence, the case turns on a construction of an interest of the Debtor, Mrs. Tawney, in the Property.

The court is satisfied that 11 U.S.C. § 548 is not designed to capture transfers of property by a debtor under the stipulated facts in this case. Despite the fact that the deeds conveying the property to and from Mrs. Tawney contained language showing that they were deeds of gift, this court is satisfied that a more accurate characterization of the transactions is a conveyance to Mrs. Tawney in trust for the specific purpose of providing collateral to secure a bail bond and a conveyance from the trust when the purpose of the trust had been fulfilled. Thus, the court holds that Mrs. Tawney held bare legal title to the property for the duration of the trust and that her conveyance back to Hancock was merely conveyance of legal title and evidenced the termination of the trust and her release.

Conclusion

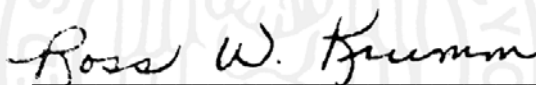
Based upon the foregoing, the court holds that the Debtors held no interest in the property which the Trustee can recover under 11 U.S.C. § 548 for the benefit of the creditors of the estate. Accordingly, it is

³ The only evidence offered by the Trustee as to insolvency is the schedules and statement of affairs of the Debtors showing liabilities in excess of assets as of the date of the filing of their petition on October 17, 2002. *See*, 11 U.S.C. § 101(32).

ORDERED:

That the complaint be, and it hereby is **DISMISSED**.

Copies of this order are directed to be mailed to Charles R. Allen, Jr., Esquire, 120 Church Avenue, S.W., Roanoke, Virginia, 24011, Chapter 7 Trustee; to Byron R. Shankman, Esquire, P. O. Box 1859, Dublin, 24084, Counsel to the Debtors; to Darren T. Delafield, Esquire, 16B Kirk Avenue, Roanoke, Virginia, 24011, Guardian ad Litem for Asa B. Hancock, Jr.; and to T. Rodman Layman, Trustee, and Myron R. Aust, Trustee, P. O. Box 190, Pulaski, Virginia, 24301.



Ross W. Krumm

Ross W. Krumm
U. S. Bankruptcy Judge

